

## Message Text

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TO AMEMBASSY WARSAW PRIORITY

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E.O. 11652: NA

TAGS:PGOV, PL

SUBJECT:DECISION OF THE SUPREME COURT OF POLAND IN THE  
CASE OF VETERANS ADMINISTRATION AND ADAM NOWICKI VS.  
PANSTWOWY ZAKLAD UBEZPIECZEN

1. AS THE EMBASSY IS AWARE, THE DEPARTMENT OF JUSTICE (DOJ)  
HAS FOR THE PAST SEVERAL YEARS PROSECUTED A LAWSUIT IN THE  
POLISH COURTS ON BEHALF OF THE VETERANS ADMINISTRATION  
AGAINST THE POLISH STATE INSURANCE AGENCY, SEEKING TO  
RECOVER THE COSTS OF MEDICAL CARE AND TREATMENT PROVIDED  
BY THE GOVERNMENT TO A VETERAN, ADAM NOWICKI, WHO WAS  
SEVERELY INJURED IN A TRAFFIC ACCIDENT IN POLAND SEVERAL  
YEARS AGO.

2. THE NEGLIGENT DRIVER WHO CAUSED THE INJURY, A POLISH  
NATIONAL, WAS SUBSEQUENTLY CONVICTED OF RECKLESS DRIVING  
BY A POLISH CRIMINAL COURT. THE NEGLIGENT DRIVER WAS  
INSURED BY THE POLISH STATE INSURANCE AGENCY. THUS, THE  
QUESTION OF NEGLIGENCE WAS DETERMINED BY THE POLISH  
JUDICIARY, AND THE ONLY QUESTION PRESENTED TO THE COURTS  
IN THE CIVIL SUIT BROUGHT BY DOJ WAS WHETHER THE USG  
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(VETERANS ADMINISTRATION) COULD RECOVER COMPENSATION BY

RIGHT OF SUBROGATION.

3. (FYI: THE VETERANS ADMINISTRATION IS BY LAW REQUIRED TO PROVIDE MEDICAL CARE TO INDIGENT VETERANS; IN TURN, UNDER U.S. LAW, THE GOVERNMENT HAS A RIGHT TO RECOVER FROM THE PARTY CAUSING THE DAMAGES THE VALUE OF THE MEDICAL CARE THUS FURNISHED. END FYI).

4. BOTH THE TRIAL COURT IN POZNAN AND THE POLISH SUPREME COURT HELD THAT THE USG HAD NO RIGHT TO RECOVER UNDER THE POLISH CIVIL CODE, WHICH SUPPOSEDLY PERMITS ONLY A PARTY THAT IS "DIRECTLY" INJURED TO RECOVER COMPENSATION. THE COURTS CONCLUDED THAT THE USG WAS ONLY "INDIRECTLY" INJURED -- THE DIRECTLY DAMAGED PARTY WAS THE VETERAN WHO SUFFERED THE INJURIES.

5. IRONICALLY, IF THE VETERAN HIMSELF SUED, HE COULD NOT RECOVER; SINCE THE VETERAN DID NOT HIMSELF PAY FOR THE TREATMENT WHICH HE RECEIVED IN THE VA HOSPITALS, HE DID NOT SUFFER ANY DAMAGE UNDER POLISH LAW.

6. (FYI: THE HOLDING OF THE POLISH COURTS IS DIAMETRICALLY OPPOSED TO HOLDINGS IN OTHER CIVIL LAW COUNTRIES, SUCH AS FRANCE, BELGIUM AND GERMANY, WHICH HAVE SIMILAR CODE PROVISIONS DEALING WITH "DIRECT/INDIRECT" DAMAGES. THOSE COURTS HAVE HELD THAT THE USG IS "DIRECTLY" DAMAGED BECAUSE OF THE PROVISIONS OF OUR LAW REQUIRING THE VETERANS ADMINISTRATION TO PROVIDE MEDICAL CARE UNDER THE CIRCUMSTANCES. THE POLISH COURTS HAVE DECLINED TO REFER BACK TO AMERICAN LAW. END FYI).

7. POLISH COUNSEL WHO HAS REPRESENTED THE DOJ IN THIS LITIGATION, ZBIGNIW WEISS (ZESPOL ADWOKACKNIR. 40, UL. HIBNERA NR. 40, WARSAW) HAS NOW ADVISED DOJ THAT THERE EXISTS UNDER POLISH LAW A POSSIBILITY OF OBTAINING FURTHER REVIEW OF THE POLISH SUPREME COURT'S ADVERSE DECISION, NAMELY, BY PETITION TO THE POLISH MINISTER OF JUSTICE. (A DRAFT PETITION TO THAT EFFECT WAS POUCHED BY THE EMBASSY ON JAN. 5, 1976 TO MR. RISTAU, CHIEF OF FOREIGN LITIGATION, DOJ.

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8. FROM A LEGAL STANDPOINT, DOJ WOULD FAVOR THE FILING OF SUCH A PETITION FOR REVIEW WITH THE POLISH MINISTER OF JUSTICE. HOWEVER, SINCE SUCH STEP IS UNUSUAL, AND WOULD TAKE THE MATTER OUT OF THE ORDINARY LEGAL CHANNELS AND BRING IT BEFORE EXECUTIVE ORGANS OF THE GOP, DOJ URGENTLY REQUESTS EMBASSY'S ADVICE WHETHER SUCH STEP MIGHT INVOLVE POLICY CONSIDERATIONS OF CONCERN TO EMBASSY.

9. DOJ WILL REGARD EMBASSY'S DECISION IN MATTER FINAL.  
IF EMBASSY DOES NOT PERCEIVE OF ANY POLICY IMPLICATIONS,

DOJ WOULD BE GRATEFUL IF EMBASSY WOULD INSTRUCT ATTORNEY  
ZBIGNIEW WEISS TO FILE THE PROPOSED PETITION WITH THE  
MINISTER OF JUSTICE FORTHWITH, AND INFORM DEPARTMENT  
ACCORDINGLY. IF EMBASSY DEEMS FILING OF PROPOSED PETITION

WITH MINISTER INADVISABLE, DEPARTMENT REQUESTS IMMEDIATE  
CABLE ADVICE, TO ENABLE DOJ TO COMMUNICATE DIRECTLY WITH  
ATTORNEY WEISS. KISSINGER

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